

September 27, 2010

Via Electronic Submission

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

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Re: Notice of Ex Parte Communication

**WT Docket No. 02-55; ET Docket Nos. 00-258, 95-18;
New DBSD Satellite Services G.P., Debtor-in-Possession, Applications for
Transfer of Control of Earth Station Licenses and Authorizations, File
Nos. SES-T/C-20091211-01575, SES-T/C-20091211-1576, SAT-T/C-
0091211-00144.**

Dear Ms. Dortch:

Sprint Nextel Corporation (“Sprint Nextel”) responds to the latest *ex parte* filing by ICO Global Communications (Holdings) Limited (“ICO Global”).¹ In its letter, ICO Global claims that Sprint Nextel decided “that extending this [reimbursement] obligation to investors was necessary to ‘uphold and protect’ the *Emerging Technologies* doctrine.”² Sprint Nextel’s requests do not involve the extension of the Emerging Technologies doctrine to mere investors, and ICO Global’s misleading arguments to the contrary are simply part of its relentless campaign to misdirect and confuse the Federal Communications Commission (the “Commission”). To reiterate:

- Sprint Nextel spent approximately \$750,000,000 dollars clearing 35 megahertz of broadband spectrum occupied by BAS incumbents. It did so in reliance on the Commission’s longstanding *Emerging Technologies* doctrine.

¹ See ICO Global Notice of *Ex Parte* Presentation, WT Docket No. 02-55, ET Docket Nos. 00-258, 95-18; New DBSD Satellite Services G.P., Debtor-in-Possession, Applications for Transfer of Control of Earth Station Licenses and Authorizations, File Nos. SAT-T/C-0091211-00144, *et al.* (filed Sept. 22, 2010) (“*ICO Global September 22 Notice of Ex Parte Presentation*”).

² ICO Global September 22 Notice of *Ex Parte* Presentation, at 2 (emphasis added).

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- The *Emerging Technologies* doctrine requires the beneficiaries of a relocation to pay their fair share of the relocation costs based on how much of the spectrum the beneficiaries occupy. In an unprecedented affront to Commission authority, both MSS systems have refused to reimburse Sprint Nextel for their fair share of the spectrum clearing costs.
- ICO Global in particular has waged an aggressive campaign of fear mongering by arguing that the policy clarification Sprint Nextel seeks would spook third party investors and chill capital formation in the broader telecom industry, at a time when the Commission is understandably concerned about ensuring its policies encourage investment and economic growth.
- In its campaign, ICO Global is misleadingly describing itself to the Commission as a mere “investor” or even worse, a “passive investor,” in DBSD, despite the fact that DBSD is essentially a wholly owned subsidiary of ICO Global and the extensive evidence in the record of ICO Global’s control of and involvement in the MSS system. To suggest ICO Global is a mere investor in the MSS system is as laughable as saying Sprint Nextel Corporation is just an investor in Sprint Spectrum L.P.
- The record shows that ICO Global has always been in total control and pervasively involved in the MSS system’s operations. Simply look at how DBSD describes ICO Global’s current stake in its transfer of control application on file with the Commission: 99.84% ownership.³
- Sprint Nextel’s suggested language for the policy clarification would exclude passive investors and would have no chilling effect on telecom industry investment whatsoever. It would, however, include entities that are directly involved in the Commission-regulated activity, thus preventing regulated parties from engaging in corporate shell games to evade regulatory responsibilities.
- If ICO Global’s fear mongering had any basis in reality, then the Commission should have heard from at least one disinterested party supporting the same “investor chilling” argument, but not a single one has come forward.
- In fact, the reason why the noteholders are proposing to take control in the pending transfer of control applications is because they only hold debt interests in DBSD (which gives them priority in bankruptcy over stockholders). If the DBSD lenders had converted all of their debt interests to equity in 2005, as ICO Global misleading

³ *New DBSD Satellite Services G.P., Debtor-in-Possession, Applications for Transfer of Control of Earth Station Licenses and Authorizations*, File Nos. SAT-T/C-0091211-00144, *et al.*, Exhibit E, at 1.

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suggests, then they would be wiped out in bankruptcy and would not be poised to take control.

- The issue before the Commission is straightforward: by upholding the *Emerging Technologies* doctrine and affirming ICO Global's reimbursement obligation to Sprint Nextel, the Commission would ensure that MSS operators with direct control of and involvement in MSS systems remain directly accountable under the Commission's rules and policies.

Pursuant to Section 1.1206 of the Commission's Rules, a copy of this letter is being filed electronically in the above-referenced dockets and electronic copies are being submitted to Commission staff listed below. If you have any questions, please feel free to contact me at (202) 778-9859.

Sincerely,

/s/ Marc S. Martin

Marc S. Martin

Counsel for Sprint Nextel Corporation

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